

### **REMARKS**

The preceding amendments and following remarks are submitted in response to the Final Office Action mailed November 9, 2005, setting a three month shortened statutory response ending February 9, 2006. With this Amendment, claim 29 has been amended and claims 34-39 have been added. Claim 25 was previously cancelled. Claims 1-24 and 26-39 remain pending in this application. Reconsideration, examination and allowance of all pending claims are respectfully requested.

#### **Amendments to the Drawings**

Applicant has amended Figure 2 in order to more clearly show one of the embodiments of the Application. Specifically, the vortex plate is shown in Figure 2, along with showing the approximate water line in relation to the vortex plate. Support for this amendment to the drawings can be found, for example, at page 6, lines 9-17 of the Application as originally filed.

#### **Amendments to the Claims**

Claim 29 has been amended in order to better describe the claimed invention. Applicant has also added dependent claims 34-39 to more completely claim certain aspects of the subject matter of the application. Support for this amendment and the new claims can be found, for example, at page 6, lines 9-17 of the Application as originally filed. Applicant asserts that these claims are allowable because they are dependent on allowable independent claims and because they recite additional patentably distinct elements.

#### **35 U.S.C. § 103 Rejections**

Claims 1-24 and 26-28 were rejected under 35 U.S.C. §103(a) as being unpatentable over Karliner, U.S. Patent No. 5,744,072 (hereinafter "Karliner") in view of PCT application Publication No. WO 02/38510 to Henley (hereinafter "Henley"). Applicant respectfully traverses this rejection. In order for prior art to render a claim obvious, each and every element of the claim must be present in the prior art. See M.P.E.P. §2143.03.

In part 2 of the Office Action, it was asserted that Karliner “substantially” discloses the invention of the Application except for a submergible, adjustable vortex shield. Further, it is asserted that Henley supplies this missing element. Specifically, it was asserted that a vortex plate or shield is supported by jack screws, and that these jack screws allow the vortex plate or shield to be adjustable.

However, a search through the text of Henley reveals that jack screws are not mentioned anywhere, either explicitly or inherently, in the application. Even though they are not mentioned in the Henley specification and the figures of Henley appear to simply show rods that support the plate or shield, it is apparently asserted in the Office Action that Figure 2 shows the plate or shield being supported by jack screws. Applicant respectfully disagrees with this assertion. A jack screw is an assembly that contains a screw, where the screw can be turned and the act of turning the screw can change the position of an object. Applicant respectfully asserts that there is nothing in Figure 2 that would lead to the conclusion that such a structure is present in Henley. First, the low resolution of Figure 2 makes it impossible to ascertain exactly what the structure of the vortex shield supports are. When looking at the figure, it is not apparent that the elongate support elements for the vortex shield 31 even have any screw threads on them.

Also, the elongate supports for the vortex shield 31 in Figure 2 cannot apparently be turned. It appears as though the end of the vortex shield supports that are attached to the vortex shield 31 are attached in some sort of bracket, and it does not appear as though this bracket would allow for the rods to be turned. It does not appear that Henley explicitly discloses jack screws.

In addition to not explicitly showing or mentioning jack screws, it is clear that Henley does not inherently disclose such structure. In order for an element to be inherently present, the element must necessarily be present. That is, it must be true. See M.P.E.P. 2112. It is not necessarily true that Henley contains jack screws. The rods shown in Figure 2 could be simple rods with the tops held in the brackets shown in the floats 21 and the bottoms held within the brackets shown on the top of the vortex shield 31. Because these could simply be rods, it cannot be said that Henley necessarily, or inherently, discloses jack screws. Thus, Applicant asserts that Henley does not disclose, explicitly or inherently, an adjustably disposed vortex plate or shield, and the

combination of Karliner and Henley cannot render the claims of the current Application obvious.

In fact, not only are jack screws not apparently shown anywhere in the Henley disclosure, but even if they were mentioned, claims 1 and 22 require that the shield be adjustable. Thus, the rods in Figure 2 would have to be disclosed as an element that allows the plate or shield to be adjustable, an aspect that is not mentioned anywhere in the Henley specification. In asserting that Henley contains jack screws and that the presence of jack screws supplies the missing “adjustably disposed” plate or shield, the Examiner again appears to be making an inherency argument. That is, it appears as though an argument is being made that the device as shown in Figure 2 is inherently adjustable even though this is not mentioned anywhere in the specification of Henley.

Applicant asserts that this is an incorrect use of the inherency doctrine. As mentioned above, in order for an element to be inherently present, the element must necessarily be present. That is, it must be true. See M.P.E.P. 2112. In this case, the support mechanism of Henley is not necessarily adjustable, as apparently asserted in the Office Action. For one thing, and as mentioned above, the specification of Henley actually appears to show that the elongate supports for the vortex shield (31) cannot be turned (because of the brackets), and thus it cannot be said that an adjustable jack screw system is necessarily present. Also, even if these structures were jack screws, jack screws are not always incorporated into structures in such a way to make them adjustable. A jack screw can be incorporated into a design in order to allow a structure to be placed at a correct position during construction. The jack screw can then be welded in place in order to prevent the structure from being inadvertently moved. As mentioned earlier, for an inherency argument, the element must necessarily be present. Because the vortex shield of Henley could be non-adjustable, an adjustable vortex plate or shield is not necessarily present in Henley. Thus, an adjustable vortex shield is not disclosed, explicitly or inherently, anywhere in Henley.

For at least the above reasons, the combination of Karliner and Henley do not contain each and every element of independent claims 1 and 22. Because they are dependent on claims 1 and 22 and because they contain additional patentably distinct elements, Applicant asserts that claims 2-21, 23, 24, 26-28 and 34-37 are also patentable.

Claims 29-33 were rejected under 35 U.S.C. §103(a) as being unpatentable over Karliner, in view of Schiller, U.S. Patent No. 4,741,825 (hereinafter “Schiller”). Applicant respectfully traverses this rejection. In order for prior art to render a claim obvious, each and every element of the claim must be present in the prior art. See M.P.E.P. §2143.03.

In part 3 of the Office Action, it was asserted that the Karliner discloses all of claim 29 except for several missing elements. Specifically, it is stated that Karliner is missing an adjustable vortex plate or shield, as required by claim 29. Part 3 of the Office Action states that this missing element is supplied by Schiller. Applicant respectfully disagrees that every element of claim 29 is disclosed in the combination of Karliner and Schiller.

As an initial matter, claim 29, as amended, does not simply require an adjustable vortex plate or shield. Claim 29 recites, in part, the step of providing an adjustable, submergible vortex shield. The combination of Karliner with Schiller does not provide for such an element. Schiller states that the shield of Schiller “floats on the surface of the aerated substance and is connected to a support structure by flexible, elongate members with allow the shield to float over a defined surface area of the aerated substance above the aerator’s propeller.” See column 1, lines 61-65 of Schiller. The vortex shield of Schiller is not apparently submergible. Thus, adding the vortex shield of Schiller to the aerator of Karliner would not result in the claimed method of claim 29, which includes the step of providing a fluid agitator having an adjustable, submergible vortex shield. Because each and every element of claim 29 is not disclosed in the combination of Karliner and Schiller, this combination cannot render claim 29 obvious. Further, because they are dependent on claim 29 and because they contain additional patentably distinct elements, it is asserted that claims 30-33, 38 and 39 are also patentable.

Reexamination and reconsideration are respectfully requested. It is submitted that all pending claims are currently in condition for allowance. Issuance of a Notice of Allowance in due course is anticipated. If a telephone conference might be of assistance, please contact the undersigned attorney at 612-677-9050.

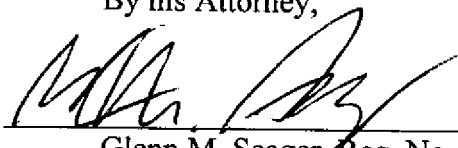
Respectfully submitted,

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By his Attorney,

Date:

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